

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1847

Introduced by Assembly Member Furutani

February 12, 2010

An act to amend Section ~~1214~~ 1202.42 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1847, as amended, Furutani. Restitution orders.

~~Under existing law, a~~ Existing law provides for victim restitution order or restitution fine is enforceable as a civil judgment, and continues to be collectible after probation and parole have terminated. Existing law requires a defendant to prepare a disclosure of assets, income, and liabilities as of the date of arrest for the crime for which restitution may be ordered, and requires the disclosure be made available to the victim orders and restitution fines, as specified. Existing law authorizes procedures for the entry and application of court orders for income deduction upon entry of an order for a restitution fine or for victim restitution, and gives the agency responsible or the collection of restitution specified powers and duties in regard to these income deduction orders.

This bill would ~~in addition~~ provide that with respect to cases charging specified offenses relating to driving under the influence of any alcoholic beverage or drug or both, the court in its order to pay restitution may, upon a request of the prosecuting attorney or pursuant to its own authority, order that the prosecuting agency attorney be given access to information regarding the defendant's assets and financial records, and to wage garnishment or authority to use lien procedures applicable

to the defendant, including, but not limited to, a writ of attachment of property. *The bill would further provide that if there is no agency in the county responsible for the collection of restitution, the prosecuting attorney may carry out the functions and duties of such an agency in regard to the income deduction orders described above, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1202.42 of the Penal Code is amended
2 to read:

3 1202.42. Upon entry of a restitution order under subdivision
4 (c) of Section 13967 of the Government Code, as operative on or
5 before September 28, 1994, paragraph (3) of subdivision (a) of
6 Section 1202.4 of this code, or Section 1203.04 as operative on or
7 before August 2, 1995, the following shall apply:

8 (a) The court shall enter a separate order for income deduction
9 upon determination of the defendant’s ability to pay, regardless
10 of the probation status, in accordance with Section 1203.
11 Determination of a defendant’s ability to pay may include his or
12 her future earning capacity. A defendant shall bear the burden of
13 demonstrating lack of his or her ability to pay. Express findings
14 by the court as to the factors bearing on the amount of the fine
15 shall not be required.

16 (b) (1) In any case in which the court enters a separate order
17 for income deduction under this section, the order shall be stayed
18 until the agency in the county responsible for collection of
19 restitution determines that the defendant has failed to meet his or
20 her obligation under the restitution order and the defendant has
21 not provided the agency with good cause for the failure in
22 accordance with paragraph (2).

23 (2) If the agency responsible for collection of restitution receives
24 information that the defendant has failed to meet his or her
25 obligation under the restitution order, the agency shall request the
26 defendant to provide evidence indicating that timely payments
27 have been made or provide information establishing good cause
28 for the failure. If the defendant fails to either provide the agency
29 with the evidence or fails to establish good cause within five days
30 of the request, the agency shall immediately inform the defendant

1 of that fact, and shall inform the clerk of the court in order that an
2 income deduction order will be served pursuant to subdivision (f)
3 following a 15-day appeal period. The defendant may apply for a
4 hearing to contest the lifting of the stay pursuant to subdivision
5 (f).

6 (c) The income deduction order shall direct a payer to deduct
7 from all income due and payable to the defendant the amount
8 required by the court to meet the defendant's obligation.

9 (d) The income deduction order shall be effective so long as the
10 order for restitution upon which it is based is effective or until
11 further order of the court.

12 (e) When the court orders the income deduction, the court shall
13 furnish to the defendant a statement of his or her rights, remedies,
14 and duties in regard to the income deduction order. The statement
15 shall state all of the following:

16 (1) All fees or interest that will be imposed.

17 (2) The total amount of income to be deducted for each pay
18 period.

19 (3) That the income deduction order applies to current and
20 subsequent payers and periods of employment.

21 (4) That a copy of the income deduction order will be served
22 on the defendant's payer or payers.

23 (5) That enforcement of the income deduction order may only
24 be contested on the ground of mistake of fact regarding the amount
25 of restitution owed.

26 (6) That the defendant is required to notify the clerk of the court
27 within seven days after changes in the defendant's address, payers,
28 and the addresses of his or her payers.

29 (7) That the court order will be stayed in accordance with
30 subdivision (b) and that a hearing is available in accordance with
31 subdivision (f).

32 (f) (1) Upon receiving the notice described in paragraph (2) of
33 subdivision (b), the clerk of the court or officer of the agency
34 responsible for collection of restitution shall serve an income
35 deduction order and the notice to payer on the defendant's payer
36 unless the defendant has applied for a hearing to contest the
37 enforcement of the income deduction order.

38 (2) (A) Service by or upon any person who is a party to a
39 proceeding under this section shall be made in the manner
40 prescribed for service upon parties in a civil action.

1 (B) Service upon the defendant’s payer or successor payer under
2 this section shall be made by prepaid certified mail, return receipt
3 requested.

4 (3) The defendant, within 15 days after being informed that the
5 order staying the income deduction order will be lifted, may apply
6 for a hearing to contest the enforcement of the income deduction
7 order on the ground of mistake of fact regarding the amount of
8 restitution owed or on the ground that the defendant has established
9 good cause for the nonpayment. The timely request for a hearing
10 shall stay the service of an income deduction order on all payers
11 of the defendant until a hearing is held and a determination is made
12 as to whether the enforcement of the income deduction order is
13 proper.

14 (4) The notice to any payer required by this subdivision shall
15 contain only information necessary for the payer to comply with
16 the income deduction order. The notice shall do all of the
17 following:

18 (A) Require the payer to deduct from the defendant’s income
19 the amount specified in the income deduction order, and to pay
20 that amount to the clerk of the court.

21 (B) Instruct the payer to implement the income deduction order
22 no later than the first payment date that occurs more than 14 days
23 after the date the income deduction order was served on the payer.

24 (C) Instruct the payer to forward, within two days after each
25 payment date, to the clerk of the court the amount deducted from
26 the defendant’s income and a statement as to whether the amount
27 totally or partially satisfies the periodic amount specified in the
28 income deduction order.

29 (D) Specify that if a payer fails to deduct the proper amount
30 from the defendant’s income, the payer is liable for the amount
31 the payer should have deducted, plus costs, interest, and reasonable
32 attorney’s fees.

33 (E) Provide that the payer may collect up to five dollars (\$5)
34 against the defendant’s income to reimburse the payer for
35 administrative costs for the first income deduction and up to one
36 dollar (\$1) for each deduction thereafter.

37 (F) State that the income deduction order and the notice to payer
38 are binding on the payer until further notice by the court or until
39 the payer no longer provides income to the defendant.

1 (G) Instruct the payer that, when he or she no longer provides
2 income to the defendant, he or she shall notify the clerk of the
3 court and shall also provide the defendant's last known address
4 and the name and address of the defendant's new payer, if known,
5 and that, if the payer violates this provision, the payer is subject
6 to a civil penalty not to exceed two hundred fifty dollars (\$250)
7 for the first violation or five hundred dollars (\$500) for any
8 subsequent violation.

9 (H) State that the payer shall not discharge, refuse to employ,
10 or take disciplinary action against the defendant because of an
11 income deduction order and shall state that a violation of this
12 provision subjects the payer to a civil penalty not to exceed two
13 hundred fifty dollars (\$250) for the first violation or five hundred
14 dollars (\$500) for any subsequent violation.

15 (I) Inform the payer that when he or she receives income
16 deduction orders requiring that the income of two or more
17 defendants be deducted and sent to the same clerk of a court, he
18 or she may combine the amounts that are to be paid to the
19 depository in a single payment as long as he or she identifies that
20 portion of the payment attributable to each defendant.

21 (J) Inform the payer that if the payer receives more than one
22 income deduction order against the same defendant, he or she shall
23 contact the court for further instructions.

24 (5) The clerk of the court shall enforce income deduction orders
25 against the defendant's successor payer who is located in this state
26 in the same manner prescribed in this subdivision for the
27 enforcement of an income deduction order against a payer.

28 (6) A person may not discharge, refuse to employ, or take
29 disciplinary action against an employee because of the enforcement
30 of an income deduction order. An employer who violates this
31 provision is subject to a civil penalty not to exceed two hundred
32 fifty dollars (\$250) for the first violation or five hundred dollars
33 (\$500) for any subsequent violation.

34 (7) When a payer no longer provides income to a defendant, he
35 or she shall notify the clerk of the court and shall provide the
36 defendant's last known address and the name and address of the
37 defendant's new payer, if known. A payer who violates this
38 provision is subject to a civil penalty not to exceed two hundred
39 fifty dollars (\$250) for the first violation or five hundred dollars
40 (\$500) for a subsequent violation.

1 (g) The court may, upon the request of the prosecuting attorney,
2 order that the prosecuting attorney be given authority to use lien
3 procedures applicable to the defendant, including, but not limited
4 to, a writ of attachment of property.

5 (h) If there is no agency in the county responsible for the
6 collection of restitution, the prosecuting attorney may carry out
7 the functions and duties of such an agency as specified in
8 subdivisions (b) and (f).

9 ~~(g)~~

10 (i) As used in this section, “good cause” for failure to meet an
11 obligation or “good cause” for nonpayment means, but shall not
12 be limited to, any of the following:

13 (1) That there has been a substantial change in the defendant’s
14 economic circumstances, such as involuntary unemployment,
15 involuntary cost-of-living increases, or costs incurred as the result
16 of medical circumstances or a natural disaster.

17 (2) That the defendant reasonably believes there has been an
18 administrative error with regard to his or her obligation for
19 payment.

20 (3) Any other similar and justifiable reasons.

21 ~~SECTION 1. Section 1214 of the Penal Code is amended to~~
22 ~~read:~~

23 ~~1214. (a) If the judgment is for a fine, including a restitution~~
24 ~~fine ordered pursuant to Section 1202.4, 1202.44, or 1202.45, or~~
25 ~~Section 1203.04 as operative on or before August 2, 1995, or~~
26 ~~Section 13967 of the Government Code, as operative on or before~~
27 ~~September 28, 1994, with or without imprisonment, or a diversion~~
28 ~~restitution fee ordered pursuant to Section 1001.90, the judgment~~
29 ~~may be enforced in the manner provided for the enforcement of~~
30 ~~money judgments generally. Any portion of a restitution fine or~~
31 ~~restitution fee that remains unsatisfied after a defendant is no longer~~
32 ~~on probation or parole or has completed diversion is enforceable~~
33 ~~by the California Victim Compensation and Government Claims~~
34 ~~Board pursuant to this section. Notwithstanding any other provision~~
35 ~~of law prohibiting disclosure, the state, as defined in Section 900.6~~
36 ~~of the Government Code, a local public entity, as defined in Section~~
37 ~~900.4 of the Government Code, or any other entity, may provide~~
38 ~~the California Victim Compensation and Government Claims~~
39 ~~Board any and all information to assist in the collection of unpaid~~
40 ~~portions of a restitution fine for terminated probation or parole~~

1 cases, or of a restitution fee for completed diversion cases. For
2 purposes of the preceding sentence, “state, as defined in Section
3 900.6 of the Government Code,” and “any other entity” shall not
4 include the Franchise Tax Board.

5 (b) In any case in which a defendant is ordered to pay restitution,
6 the order to pay restitution (1) is deemed a money judgment if the
7 defendant was informed of his or her right to have a judicial
8 determination of the amount and was provided with a hearing,
9 waived a hearing, or stipulated to the amount of the restitution
10 ordered, and (2) shall be fully enforceable by a victim as if the
11 restitution order were a civil judgment, and enforceable in the same
12 manner as is provided for the enforcement of any other money
13 judgment. Upon the victim’s request, the court shall provide the
14 victim in whose favor the order of restitution is entered with a
15 certified copy of that order and a copy of the defendant’s disclosure
16 pursuant to paragraph (4) of subdivision (f) of Section 1202.4,
17 affidavit or information pursuant to paragraph (5) of subdivision
18 (f) of Section 1202.4, or report pursuant to paragraph (7) of
19 subdivision (f) of Section 1202.4. The court also shall provide this
20 information to the district attorney upon request in connection with
21 an investigation or prosecution involving perjury or the veracity
22 of the information contained within the defendant’s financial
23 disclosure. In addition, upon request, the court shall provide the
24 California Victim Compensation and Government Claims Board
25 with a certified copy of any order imposing a restitution fine or
26 order and a copy of the defendant’s disclosure pursuant to
27 paragraph (4) of subdivision (f) of Section 1202.4, affidavit or
28 information pursuant to paragraph (5) of subdivision (f) of Section
29 1202.4, or report pursuant to paragraph (7) of subdivision (f) of
30 Section 1202.4. A victim shall have access to all resources available
31 under the law to enforce the restitution order, including, but not
32 limited to, access to the defendant’s financial records, use of wage
33 garnishment and lien procedures, information regarding the
34 defendant’s assets, and the ability to apply for restitution from any
35 fund established for the purpose of compensating victims in civil
36 cases. Any portion of a restitution order that remains unsatisfied
37 after a defendant is no longer on probation or parole is enforceable
38 by the victim pursuant to this section. Victims and the California
39 Victim Compensation and Government Claims Board shall inform
40 the court whenever an order to pay restitution is satisfied.

1 ~~(e) Notwithstanding subdivision (b) or any other provision, with~~
2 ~~respect to cases charged under Section 191.5, subdivision (a) or~~
3 ~~(b) of Section 23152 of the Vehicle Code, or subdivision (a) or (b)~~
4 ~~of Section 23153 of the Vehicle Code, the court in its order to pay~~
5 ~~restitution may, upon a request of the prosecuting attorney or~~
6 ~~pursuant to its own authority, order that the prosecuting agency~~
7 ~~be given access to information regarding the defendant's assets~~
8 ~~and financial records, and authority to use wage garnishment or~~
9 ~~lien procedures applicable to the defendant, including, but not~~
10 ~~limited to, a writ of attachment of property.~~

11 ~~(d) Except as provided in subdivision (e), and notwithstanding~~
12 ~~the amount in controversy limitation of Section 85 of the Code of~~
13 ~~Civil Procedure, a restitution order or restitution fine that was~~
14 ~~imposed pursuant to Section 1202.4 in any of the following cases~~
15 ~~may be enforced in the same manner as a money judgment in a~~
16 ~~limited civil case:~~

- 17 ~~(1) In a misdemeanor case.~~
- 18 ~~(2) In a case involving violation of a city or town ordinance.~~
- 19 ~~(3) In a nonecapital criminal case where the court has received~~
20 ~~a plea of guilty or nolo contendere.~~

21 ~~(e) Chapter 3 (commencing with Section 683.010) of Division~~
22 ~~1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply~~
23 ~~to a judgment for any fine or restitution ordered pursuant to Section~~
24 ~~1202.4 or Section 1203.04 as operative on or before August 2,~~
25 ~~1995, or Section 13967 of the Government Code, as operative on~~
26 ~~or before September 28, 1994, or to a diversion restitution fee~~
27 ~~ordered pursuant to Section 1001.90.~~